

REMARKS

Reconsideration of the application is requested.

Claims 1-19 have been rejected. Claims 20-33 have been allowed. No claims have been amended. Thus, Claims 1-33 remain pending in the application.

Applicant appreciatively acknowledges the Examiner's allowance of claims 20-33, as well as the Examiner's finding that claims 17-19 would be allowable but for a rejection under 35 U.S.C. §101, that rejection is addressed below. Applicant also appreciatively acknowledges the Examiner's receipt of amendments to claims 4, 17, 23, 24, and 31, correcting previously undetected grammatical informalities, and the Examiner's consideration of Applicant's arguments submitted in Applicant's appeal brief dated July 22, 2005.

Claim Rejections under 35 U.S.C. § 101

In "Claim Rejections – 35 USC § 101," item 7 on page 2 of the above-identified Office Action, claims 17-19 have been rejected as being directed to non-statutory subject matter. In light of the Board of Patent Appeals and Interferences decision in *Ex parte Lundgren*, Appeal No. 2003-2088, Application 08/093,516, (Precedential BPAI opinion September 2005), and in light of the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter issued by the United States Patent and Trademark Office, the guidelines issued subsequent to the Examiner's rejection, Applicant respectfully submits that no amendment is necessary, and that claims 17-19 are, under the decision and interim guidelines, directed to statutory subject matter.

Claim Rejections – 35 U.S.C. § 102

In “Claim Rejections – 35 USC § 102” item 9 on page 4 of the above-identified Office Action, claims 1-3, 6-11, and 14-16 have been rejected as being fully anticipated by U.S. Patent No. 5,019,963 to *Alderson, et al.* (hereinafter “Alderson”) under 35 U.S.C. § 102(b). Applicant respectfully traverses.

Alderson discloses a data processing network comprised of a host processor having an object library and control logic, and a plurality of workstations connected to the host processor. The workstations contain “PC programs at particular levels.” These programs have associated data files, also at particular levels. To update those data files to the latest level (which need not be a new version – a level may simply be a patch of an existing version), the host processor may query one or more of the workstations to ascertain the current level of the data files on those workstations. The workstations then reply to the host processor indicating the data files they have and what levels those data files are at. Upon receiving the reply, the host processor then ascertains whether the data files of the workstations are the latest level data files available. If one or more data files are not the latest levels, the host processor may send the latest level data files, stored in its object library, to the workstations, bringing the workstations up to the latest level.

In contrast, the present invention as claimed in claim 1 recites:

“loading the latest version of the runtime library at initialization of the application service provision apparatus, the latest version of the runtime library includes data associating an application with a required version of the runtime library;

during operation, receiving by a dispatcher a request for service for the application;

in response, determining by the dispatcher whether the required version of the runtime library used by the application is known to the dispatcher; and

if the version of the runtime library required by the application is not known to the dispatcher, inquiring by the dispatcher of the latest version of the runtime library to learn of the required version of the runtime library.”

Even assuming *arguendo* that the host processor of Alderson reads on the application service provision apparatus of claim 1, that the control logic of Alderson reads on the dispatcher of claim 1, and that the data files of Alderson read on the runtime libraries of claim 1 (points which Applicant does not concede), Alderson still fails to teach both “loading the latest version of the runtime library at initialization of the application service provision apparatus, the latest version of the runtime library includes data associating an application with a required version of the runtime library” and “if the version of the runtime library required by the application is not known to the dispatcher, inquiring by the dispatcher of the latest version of the runtime library to learn of the required version of the runtime library.”

Alderson simply does not teach, expressly or inherently, the “loading of the latest version of the runtime library at initialization of the application service provision apparatus.” Rather, Alderson discloses a host processor having a library of data files which may include the latest version of the data file. Nowhere in Alderson is the loading of any of the data files at the initialization of the host processor expressly discussed. Nor is such loading inherent. A host processor such as the host processor taught in Alderson may well be initialized without loading any of the library of data files. The host processor may in fact be initialized, subsequently receive a reply from a workstation, and then load into RAM from permanent storage the latest version of the data file. Such an embodiment of Alderson would be perfectly consistent with the disclosure of Alderson, and would not inherently teach the loading of a latest version at initialization.

In the Office Action, the Examiner asserts that such loading is well known in the art. Applicant respectfully reminds the Examiner that such considerations are not relevant to a 35 U.S.C. §102 analysis. Under §102, each and every element of a claim must be expressly or inherently disclosed in a reference. As discussed above, “loading the latest version . . .” is not expressly or inherently disclosed by Alderson.

Additionally, Alderson fails to disclose, expressly or inherently, “the latest version of the runtime library includes data associating an application with a required version of the runtime library.” A data file of Alderson may well be the latest version and may well include data associating an application with the required version of the data file. However, Alderson fails to expressly disclose any such data in any data file. And such data is also not inherently disclosed; the data files of Alderson may well perform the role set out for them without including any such data. Thus, Alderson fails to disclose, expressly or inherently, a data file having data associating an application with a required version of the data file.

Further, Alderson does not teach, “if the version of the runtime library required by the application is not known to the dispatcher, inquiring by the dispatcher of the latest version of the runtime library to learn of the required version of the runtime library.” Even assuming that the control logic of Alderson reads on the dispatcher of claim 1 (a point Applicant does not concede), the control logic of Alderson does not inquire of the latest version of the data file (assuming *arguendo* that data file reads on runtime library, a point Applicant does not concede) to learn the required version of the data file. Nothing in Alderson expressly discloses the control logic asking the latest version data file anything, much less the “required version of the runtime library.” Nor is such an inquiry inherently disclosed. Alderson merely teaches “determining” what the latest level of the data file is. How the control logic makes this determination is not disclosed. The control logic might, for instance, query a database to determine the latest level of a data file. If the data file is in fact a runtime library, such a query is certainly not equivalent to inquiring of the data file itself.

Accordingly, Alderson fails to teach the present invention as claimed in claim 1 in as complete of detail as is claimed.

Claims 7, 9, and 16 recite limitations similar to those of claim 1. Accordingly, for at least the same reasons, Alderson fails to anticipate claims 7, 9, and 16.

Claims 3, 6, 8, 10-11, and 14-15 depend from claims 1, 7, and 9, incorporating their limitations respectively. Accordingly, for at least the same reasons, Alderson fails to anticipate claims 3, 6, 8, 10-11, and 14-15.

Claim Rejections – 35 U.S.C. § 103

In “Claim Rejections – 35 USC § 103” item 11 on page 6 of the above-identified final Office Action, claims 4, 5, 12, and 13 have been rejected as being unpatentable over Alderson under 35 U.S.C. § 103(a). For at least the reasons previously provided, Applicant traverses.

Claims 4, 5, 12, and 13 depend from claims 1 and 9, incorporating their limitations respectively. Thus, for at least the same reasons that claims 1 and 9 are patentable, claims 4, 5, 12, and 13 are patentable over Alderson under § 103.

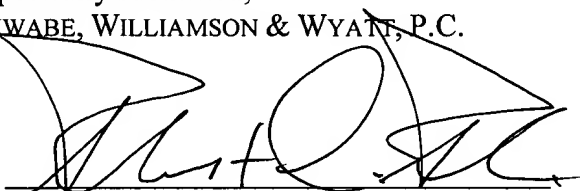
Additionally, the motivation to modify Alderson to “determin[e] whether the required version of the runtime library is loaded if the required version is an earlier version of the runtime library and, if the required earlier version of the runtime library is not loaded, loading the required earlier version” is found nowhere in Alderson. Applicant respectfully reminds the Examiner that the invention must be considered as a whole, without the benefit of hindsight. Thus, the motivation to combine references or modify a reference in a certain way must be found in the reference or references, not in the instant application. Such motivation is not expressed anywhere in Alderson. Therefore, for at least this additional reason, claims 4, 5, 12, and 13 are patentable over Alderson under § 103.

CONCLUSION

In view of the foregoing, reconsideration and allowance of claims 1-19 are solicited. Applicant submits that claims 1-33 are in condition for allowance, and appreciatively acknowledges the Examiner's allowance of claims 20-33. Accordingly, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1513. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,
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by:


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